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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. LISBETH RANGEL, Defendant and Appellant.	H042843 (Monterey County Super. Ct. No. SS142839A)

I. INTRODUCTION

Defendant Lisbeth Rangel pleaded no contest to being an accessory (Pen. Code, § 32)[1] and was placed on probation for three years. On appeal, defendant challenges four of her probation conditions, arguing that the phrase "have reason to know" renders them constitutionally vague. For reasons that we will explain, we will affirm the order of probation.

II. BACKGROUND

On November 2, 2014, Jane Doe was robbed of her purse. The perpetrator fled in a car driven by defendant.

[1] All further statutory references are to the Penal Code.

Defendant was originally charged with second degree robbery (§ 211), but pursuant to a plea agreement, the District Attorney added a charge of accessory (§ 32), to which defendant pleaded no contest.

At the sentencing hearing held on September 29, 2015, the trial court suspended imposition of sentence, dismissed the robbery charge, and placed defendant on probation for three years. The trial court imposed a number of probation conditions, including four conditions containing the phrase "have reason to know."

Condition No. 14 states: "Not visit or remain in any area you know, have reason to know, or are told by the probation officer is a gang-gathering area. (The term 'gang' in these conditions of probation refers to 'criminal street gang' as defined in PC § 186.22.)"

Condition No. 15 states: "Not associate with any individuals you know, have reason to know, or are told by the probation officer are gang members, illegal drug users, or who are on any form of probation, mandatory supervision, post release community supervision, or parole supervision."

Condition No. 19 states: "Not possess, wear, use or display any item you know, have reason to know, or have been told by the probation officer is associated with membership or affiliation in a gang, including, but not limited to, any insignia, emblem, button, badge, cap, hat, scarf, bandanna, or any article of clothing, hand sign, or paraphernalia including the color red/blue."

Condition No. 21 states: "You shall not be present at any criminal court proceeding where you know, have reason to know, or the probation officer informs you that a member of a criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless you are a party, you are a defendant in a criminal action, you are subpoenaed as a witness, or you have the prior permission of your probation officer."

III. DISCUSSION

Defendant challenges the four probation conditions reproduced above. Defendant argues these conditions violate her constitutional right to due process because they include a "have reason to know" element, which she claims is impermissibly vague. According to defendant, a probationer can only "guess about things he or she does not actually know," which is likely to chill the probationer from "engaging in lawful expressive and associational activities."

Defendant acknowledges that a panel of this court has held that a constructive knowledge requirement similar to the "have reason to know" requirement at issue here was appropriate in a probation condition prohibiting a defendant from associating with persons " ' "[he should] know, or reasonably should know" ' " are drug dealers, probationers, or parolees. (*People v. Mendez* (2013) 221 Cal.App.4th 1167, 1170 (*Mendez*).)

However, defendant contends *Mendez* was wrongly decided. She argues *Mendez* inappropriately relied on various penal statutes that contain constructive knowledge elements and on the cases upholding the constitutionality of these statutes. Defendant argues that cases involving the constitutionality of penal statutes where a criminal negligence standard suffices have no application to probation conditions, because "[a] probationer stands in a different position than an ordinary citizen" and is "subject to the supervision of a governmental official, i.e. a probation officer." Therefore, defendant argues, in order for a probationer to successfully complete the rehabilitative process, it is essential the trial court provide "adequate and precise guidance" in the form of an actual knowledge standard.

Defendant's arguments are identical to those made by the *Mendez* defendant, which were rejected by this court. In *Mendez*, this court reasoned that holding a probationer to the standard of a reasonable person will promote rehabilitation because it encourages a probationer to "be aware of the status of acquaintances and to actively avoid

potentially dangerous companions." (*Mendez, supra*, 221 Cal.App.4th at p. 1177.) A probationer would be rewarded by "[w]illful ignorance of warning signs" if a probation condition is violated only when the probationer actually, subjectively recognizes the existence of a prohibited condition such as the status of an individual as a parolee. (*Ibid.*)

Defendant insists it is "worth noting that the Legislature has carefully limited its use of the constructive knowledge standard to those situations where it would essentially be impossible or highly unlikely for an observer not to know the status of the person in question," including offenses committed against police officers or elderly persons. However, as reasoned in *Mendez*, "the Legislature has extended its reach [the objective reasonable person standard] to individuals whose status may not be readily apparent, such as dependent adults, nonsworn employees of probation departments, and school employees." (*Mendez, supra*, 221 Cal.App.4th at p. 1177.)

Defendant maintains *Mendez* conflicts with another opinion by this court, *People v. Gabriel* (2010) 189 Cal.App.4th 1070 (*Gabriel*). The defendant in *Gabriel* challenged a probation condition barring him from associating with " 'any individuals you know or suspect to be gang members, drug users, or on any form of probation or parole supervision.' " (*Id.* at p. 1073.) This court modified the challenged condition to delete the word "suspect," explaining: "To 'suspect' is 'to imagine (one) to be guilty or culpable on slight evidence or without proof' or 'to imagine to exist or be true, likely, or probable.' (Merriam-Webster's Collegiate Dict. (10th ed. 1999) p. 1187 (Webster's).) To 'imagine' is 'to form a notion of without sufficient basis.' (Webster's, at p. 578.) Given this lack of specificity, the word 'suspect' fails to provide defendant with adequate notice of what is expected of him when he lacks actual knowledge that a person is a gang member, drug user, or on probation or parole. Moreover, inclusion of this word renders the condition insufficiently precise for a court to determine whether a violation has occurred." (*Ibid.*)

In *Mendez*, this court expressly found no discrepancy with *Gabriel*: "The probation condition in *Gabriel* did not expressly require the probationer to have a reasonable suspicion of his companion's status. 'Reasonable suspicion' is a familiar concept in the law of search and seizure that involves an objective standard. [Citations.] [¶] *Gabriel* determined that a mental element based on the probationer's subjective suspicion would create enforcement problems. It did not discuss or determine whether other mental elements such as constructive knowledge would be impermissibly vague." (*Mendez, supra,* 221 Cal.App.4th at p. 1178.) Therefore, this court found "no inconsistency between *Gabriel* and [the] conclusion [in *Mendez*] that 'reasonably should know' [was] not unconstitutionally vague as used in the challenged conditions." (*Ibid.*)

Defendant also cites another opinion from this court, *People v. Kim* (2011) 193 Cal.App.4th 836 (*Kim*) in asserting that an express knowledge requirement is constitutionally required. In *Kim*, this court considered whether due process required the addition of express knowledge requirements to certain probation conditions. This court noted that such requirements were "reasonable and necessary" when the probation conditions involved "[t]he affiliations and past history of another person," since such a status "may not be readily apparent without some personal familiarity." (*Id.* at p. 845.) *Kim* does not help defendant, however, as the court in that case did not consider whether a constructive knowledge element would be sufficient to satisfy due process notice requirements for probation conditions involving the status of a person, place, or thing.

We adhere to the rationale set forth in *Mendez* and reject defendant's argument that a constructive knowledge requirement renders her probation conditions impermissibly vague. "Holding a probationer to the standard of a reasonable person supplies ' "an additional motive to take care before acting, to use their faculties and draw on their experience in gauging the potentialities of contemplated conduct. To some extent, at least, this motive may promote awareness and thus be effective as a measure of control. . . ." ' " (*Mendez, supra,* 221 Cal.App.4th at pp. 1177-1178.) Additionally, other

appellate courts have added constructive knowledge elements to eliminate vagueness in probation conditions. (See *People v. Turner* (2007) 155 Cal.App.4th 1432, 1436; *People v. Moses* (2011) 199 Cal.App.4th 374, 381-382.)

In sum, we conclude the inclusion of a constructive knowledge element in the challenged probation conditions does not render the conditions unconstitutionally vague.

IV. DISPOSITION

The order of probation is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.

People v. Rangel
H042843